

1 Under § 3582(c)(2), a district court may not reduce the term of imprisonment of an
2 already incarcerated defendant unless that defendant has been sentenced pursuant to a
3 guideline range “that has subsequently been lowered by the Sentencing Commission.”

4 Amendment 591 clarified that “in order for the enhanced penalties in § 2D1.2 to
5 apply, the defendant [must have been] convicted of an offense referenced to § 2D1.2, rather
6 than simply have engaged in conduct described by that guideline.” See U.S.S.G. App. C.
7 amend. 591, “Reason for Amendment” (Nov. 1, 2001). Section 2D1.2 of the sentencing
8 guidelines provides heightened base offense levels for drug offenses occurring near protected
9 locations or involving underage or pregnant individuals. See U.S.S.G. § 2D1.2.

10 In 1992, a jury convicted Defendant of conspiracy to distribute cocaine (21 U.S.C. §§
11 846 and 841(a)(1)), and attempt to possess and distribute cocaine (21 U.S.C. § 841(a)(1))
12 (Dkt. 368). Defendant was sentenced to 360 months in prison (Dkt. 440-441). The Court’s
13 Judgment was affirmed on appeal (Dkt. 575). Defendant’s sentence was later reduced to 288
14 months in prison (Dkt. 668). Defendant’s subsequent motions filed under 28 U.S.C. § 2255
15 were denied (see Dkt. 730-731; 888-889; & 939-940, 952).

16 Defendant’s base offense level was calculated under U.S.S.G. § 2D1.1(c)(1) with a
17 notation that the weight of the cocaine exceeded 1,500 kilograms. Defendant’s base offense
18 level was not increased based on U.S.S.G. § 2D1.2. Amendment 591 does not apply to
19 Defendant.

20 Defendant argues that Amendment 591 provides a foundation for a sentence on the
21 basis of U.S.S.G. § 2X1.1. Application Note 1 to § 2X1.1 explains that certain attempts,
22 conspiracies, and solicitations are covered by other offense guidelines and states that offense
23 guidelines that expressly cover attempts and conspiracies include § 2D1.1. Section 2X1.1
24 provides no basis for modification of Defendant’s sentence.

25 Defendant faced a statutory term of not less than 10 years nor more than life as a result
26 of his offenses of conviction. 21 U.S.C. §§ 841(a)(1) & (b)(1)(A)(ii)(II). A defendant cannot
27 obtain relief when his sentence does not exceed the statutory maximum authorized by the
28 jury’s verdict even if the district court determined the drug amount by a preponderance of

1 the evidence, instead of having the jury determine the amount beyond a reasonable doubt.
2 United States v. Say, 247 F.3d 929, 942 (9th Cir. 2001).

3 Defendant argues that he did not complete the substantive offense. The authorities
4 Defendant cites have no relevance to this claim. Defendant's Judgment of conviction and
5 sentence has been affirmed and his subsequent § 2255 motions denied.

6 Accordingly,

7 **IT IS ORDERED** that Defendant's Motion for Modification of Sentence (Dkt. 988)
8 is denied.

9 DATED this 10th day of May, 2010.

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Earl H. Carroll
United States District Judge
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